Filed 7/25/19 Alvarado v. Hollister School Dist. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JOSUE ALVARADO, a Minor, etc., Plaintiff and Appellant, v. HOLLISTER SCHOOL DISTRICT, Defendant and Respondent.	H045924 (San Benito County Super. Ct. No. CU1800015)

Appellant Josue Alvarado, through his guardian ad litem, Irma Alvarado, appeals the judgment of dismissal that was entered after the trial court sustained respondent Hollister School District's (District) demurrer without leave to amend. In its demurrer, the District argued that the statute of limitations for Alvarado's lawsuit had expired. On appeal, Alvarado argues that the trial court erroneously sustained the demurrer because he adequately pleaded facts to show that the District was equitably estopped from asserting a statute of limitations defense. He further argues that at a minimum, the trial court erred when it denied him leave to amend his complaint. We agree that Alvarado should be permitted to amend his complaint and reverse the judgment of dismissal.

BACKGROUND

1. *The Complaint*

On January 12, 2018, Alvarado filed a complaint against the District alleging causes of action for negligent supervision and res ipsa loquitur. The complaint alleged that Alvarado was a student at Hollister Dual Language Academy on May 4, 2015, when

he was injured due to the school staff's negligent supervision. Alvarado's injuries, which included fractured facial bones and brain damage, required multiple surgeries, and it was anticipated that he may need additional surgeries in the future.

The complaint alleged that Alvarado had complied with applicable government claims statutes, but his claim was rejected by the District on September 28, 2015. The complaint further alleged the following: "Defendants are estopped from claiming that the current lawsuit is untimely filed. Despite the rejection of Plaintiffs [*sic*] claim, Defendants, through their employees Erika Sanchez and Dennis Kurtz[,] continued to represent that they would assist Plaintiff and Plaintiff's mother in obtaining compensation for Plaintiff's injuries. . . . These representations lulled Plaintiff and Plaintiff's mother into not timely filing a complaint. Had Plaintiff and his mother been told that Defendants' representations that they would assist in settling of the claim [*sic*], Plaintiff would have filed litigation within the time required by law."

Attached to the complaint was the letter sent by the District rejecting Alvarado's government claim. The letter specifically stated, "Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action in the State of California on this claim."

Also attached to the complaint were letters from the District's office of the assistant superintendent, dated October 14, 17, 21, and December 1, 2016. The letters summarized the District's settlement offers.

2. *The Demurrer*

On March 7, 2018, the District demurred to Alvarado's complaint. In its demurrer, the District argued that Alvarado's government claim was rejected on September 28, 2015, yet Alvarado did not file his current lawsuit until January 12, 2018, well-beyond the applicable six-month statute of limitations under Government Code

section 945.6, subdivision (a)(1).[1] The District acknowledged that Alvarado alleged that District employees had presented settlement offers and had discussed settlement with him and his mother but noted that the letters attached to the complaint demonstrated that this correspondence occurred in October and December 2016, after the six-month statute of limitations had expired. The District further maintained that Alvarado did not allege that the District did anything to prevent or actively discourage Alvarado from filing a timely civil complaint.

Alternatively, the District argued that sections 818.8 and 820.2 immunized it from liability. As a result, even if the District's employees had made misrepresentations to Alvarado that prevented him from filing a complaint, such actions did not render the District liable for any incurred damages.

Alvarado opposed the District's motion. In his opposition, he insisted that his complaint adequately alleged the necessary elements for equitable estoppel to apply, precluding the District from raising a statute of limitations defense. Misinterpreting the District's immunity argument, Alvarado also claimed that the District was not immune from lawsuits alleging negligent supervision of children.

3. *The Order and Judgment of Dismissal*

On April 12, 2018, the trial court sustained the District's demurrer to Alvarado's complaint without leave to amend. On May 3, 2018, the trial court entered judgment in favor of the District and dismissed Alvarado's complaint.

DISCUSSION

Alvarado argues that the trial court erroneously sustained the District's demurrer because his complaint pleaded sufficient facts to demonstrate that the District was equitably estopped from raising a statute of limitations defense. He further argues that the District's alternative argument—that it is immune from liability based on its

[1] Unspecified statutory references are to the Government Code.

employees' actions—has no merit. Lastly, Alvarado claims that the trial court erred when it denied him leave to amend the complaint.

1. *Standard of Review*

We review an order sustaining a demurrer de novo, exercising our independent judgment as to whether a cause of action has been stated as a matter of law. (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) The facts alleged in the pleading are deemed to be true, but contentions, deductions, and conclusions of law are not. (*Hill v. Roll Internat. Corp*. (2011) 195 Cal.App.4th 1295, 1300.) In addition to the complaint, we also may consider matter subject to judicial notice. (*Ibid*.) Facts that are subject to judicial notice trump contrary allegations in the pleadings. (*Ibid*.) Facts appearing in exhibits attached to the complaint are also accepted as true and are given precedence to the extent they contradict the allegations. (*Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.)

"When a demurrer is sustained without leave to amend, [we] must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect; if so, [we] will conclude that the trial court abused its discretion by denying the plaintiff leave to amend. [Citation.] The plaintiff bears the burden of establishing that it could have amended the complaint to cure the defect." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1035.)

2. *Statute of Limitations and Equitable Estoppel*

First, Alvarado claims the demurrer was improperly sustained because he sufficiently alleged facts to establish that the District was equitably estopped from asserting a statute of limitations defense. As we explain, we disagree. The statute of limitations for filing Alvarado's complaint had expired, and he failed to specifically plead facts to establish equitable estoppel.

In general, "subject to exceptions listed in Government Code section 905, '[b]efore suing a public entity, the plaintiff must present a timely written claim for damages to the entity.' [Citation.] Compliance with the claim requirement is a condition precedent to suing the public entity." (*Rubenstein v. Doe No. 1* (2017) 3 Cal.5th 903, 906.) If a government claim is rejected, a lawsuit must be brought within six months of the public entity's denial, subject to certain exceptions as provided in sections 946.4 and 946.6. (§ 945.6.) Here, Alvarado's government claim was rejected by the District on September 28, 2015. He filed his lawsuit approximately two years later, on January 12, 2018, well-after the six-month statute of limitations had expired. Therefore, his complaint was untimely.

Alvarado, however, argues that he alleged sufficient facts in his complaint to equitably estop the District from asserting a statute of limitations defense. Appellate courts have applied the doctrine of equitable estoppel in the analogous context of a plaintiff's failure to timely file a government claim. " 'It is well settled that a public entity may be estopped from asserting the limitations of the claims statute where its agents or employees have prevented or deterred the filing of a timely claim by some affirmative act.' " (*J.P. v. Carlsbad Unified School Dist.* (2014) 232 Cal.App.4th 323, 333 (*J.P.*).) It follows that equitable estoppel may also preclude a public entity from asserting a statute of limitations defense against an untimely-filed complaint.

"The general rule is that estoppel must be specifically 'pleaded in the complaint with sufficient accuracy to disclose [the] facts relied upon.' " (*Transport Ins. Co. v. TIG Ins. Co.* (2012) 202 Cal.App.4th 984, 1013 (*Transport Ins. Co.*).) " 'Estoppel as a bar to a public entity's assertion of the defense of noncompliance arises when the plaintiff establishes by a preponderance of the evidence: (1) the public entity was apprised of the facts, (2) it intended its conduct to be acted upon, (3) plaintiff was ignorant of the true

state of facts, and (4) relied upon the conduct to his detriment.' " (*J.P., supra*, 232 Cal.App.4th at p. 333.)

"Estoppel most commonly results from misleading statements about the need for or advisability of a claim. [Citations.] Estoppel may also be invoked where conduct on behalf of the public entity induces a reasonably prudent person to avoid seeking legal advice or commencing litigation. [Citation.] Finally, acts of violence or intimidation on the part of the public entity that are intended to prevent the filing of a claim may create an estoppel." (*Christopher P. v. Mojave Unified School Dist.* (1993) 19 Cal.App.4th 165, 170.) " ' "An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. [Citation.] To create an equitable estoppel, 'it is enough if the party has been induced to refrain from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.' " ' " (*J.P., supra*, 232 Cal.App.4th at p. 334.)

With regards to estoppel, Alvarado's complaint alleged: "Defendants are estopped from claiming that the current lawsuit is untimely filed. Despite the rejection of Plaintiffs [*sic*] claim, Defendants, through their employees Erika Sanchez and Dennis Kurtz continued to represent that they would assist Plaintiff and Plaintiff's mother in obtaining compensation for Plaintiff's injuries. . . . These representations lulled Plaintiff and Plaintiff's mother into not timely filing a complaint. Had Plaintiff and his mother been told that Defendants' representations that they would assist in settling of the claim [*sic*], Plaintiff would have filed litigation within the time required by law."

Alvarado's complaint is legally insufficient because he does not specifically plead facts establishing the elements of equitable estoppel. (See *Transport Ins. Co., supra*, 202 Cal.App.4th at p. 1013 [elements of estoppel must be pleaded with sufficient accuracy].) Alvarado's complaint vaguely alleged that District employees represented that they would help him obtain compensation for his injuries, which ultimately influenced him

into not filing a timely complaint. Offers of settlement, however, do not automatically preclude the District from asserting a statute of limitations defense. (*Lobrovich v. Georgison* (1956) 144 Cal.App.2d 567, 573 [“ ‘an estoppel to plead the statute does not arise in every case in which there are negotiations for a settlement of the controversy’ ”].)

Aside from his nonspecific description of the District’s settlement offers, Alvarado attached letters from the District’s office of the assistant superintendent, which summarized the District’s attempts to offer Alvarado compensation for his injuries. The letters, however, do not discourage Alvarado from filing a lawsuit. The letters were also sent in October and December 2016, more than a year after the District’s rejection letter was sent and after the applicable six-month statute of limitations to file a complaint had already expired. Alvarado does not allege that settlement offers took place before the statute of limitations had run and does not describe the specific representations that “lulled” him into not filing a timely complaint.

Moreover, Alvarado’s complaint does not allege that he was “ ‘ignorant of the true state of facts’ ” (*J.P.*, *supra*, 232 Cal.App.4th at p. 333) about the statute of limitations, one of the required elements of equitable estoppel. The District’s letter rejecting Alvarado’s government claim specifically informed Alvarado that he only had six months from its rejection to file a lawsuit. An allegation that District employees “continued to represent that they would assist [Alvarado and his mother] in obtaining compensation” does not allege that Alvarado was unaware of the applicable statute of limitations.

As a result, we find that the trial court properly sustained the District’s demurrer to Alvarado’s complaint. As alleged, his complaint is barred by the six-month statute of limitations set forth under section 945.6.

3. *Leave to Amend*

Alvarado argues that the trial court abused its discretion when it denied him leave to amend his original complaint. We agree and believe that Alvarado should be given the

opportunity to amend his complaint to specifically plead the facts that give rise to his equitable estoppel claim.

To meet his burden to establish that he can amend his complaint to cure any defects, a plaintiff " 'must show in what manner he can amend his complaint and how that amendment will change the legal effect of his pleading.' [Citation.] The assertion of an abstract right to amend does not satisfy this burden. [Citation.] The plaintiff must clearly and specifically set forth the 'applicable substantive law' [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, the plaintiff must set forth factual allegations that specifically state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusory." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43-44 (*Rakestraw*).) In general, " 'it is an abuse of discretion to sustain a general demurrer to a complaint without leave to amend if there is a reasonable possibility the defect in the complaint can be cured by amendment.' " (*Ard v. County of Contra Costa* (2001) 93 Cal.App.4th 339, 348 (*Ard*).)

In his reply brief, Alvarado claims that "the complaint can be amended to more fully allege the nature of the oral and written representations on which [Alvarado] relied in not bringing the underlying action within 6 months of the denial of his claim. Such an amendment can allege facts that more clearly show the nature of the representations and set forth more particularity as to when and where such representations occurred." This statement suggests that Alvarado is able to allege that the District made representations to him before the six-month statute of limitations had ended and that he relied on the statements to his detriment. Broadly construed, Alvarado's reply brief represents that he can specifically plead facts that underlie the elements of equitable estoppel. As a result, we believe that reversal of the judgment is appropriate so that Alvarado may amend his complaint, especially given the liberal policy favoring amendment of complaints and the

strong policy in favor of hearing a matter on its merits. (See *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685.) We caution, however, that Alvarado must support his legal allegations with *facts*, not conclusory allegations that do not withstand demurrer. (See *Rakestraw*, *supra*, 81 Cal.App.4th at pp. 43-44.)

The District argues that Alvarado cannot amend his complaint to allege that the parties had a written agreement extending the statute of limitations. Thus, the District insists that leave to amend was properly denied because the six-month statute of limitations described in section 945.6 is unaffected by settlement negotiations unless the parties have a written agreement extending the time to file a complaint.

To support this argument, the District relies on *Isaacson v. City of Oakland* (1968) 263 Cal.App.2d 414 (*Isaacson*). The District misinterprets *Isaacson*. In *Isaacson*, the plaintiff was awarded damages following a court trial, and the City of Oakland appealed, arguing that the plaintiff's action was barred by the statute of limitations. (*Id.* at p. 416.) The plaintiff raised several arguments pertaining to the statute of limitations defense, including a claim of estoppel, which was rejected since an element of estoppel, that the party asserting estoppel relied on the conduct of the party to be estopped to his detriment, was missing. (*Id.* at p. 419.) The plaintiff also argued that the statute of limitations was not a bar to his action because the City of Oakland negotiated with the plaintiff about his government claim, which the plaintiff interpreted to be a "compromise" under section 912.6, subdivision (a)(4).[2] (*Isaacson*, *supra*, at p. 420.) Thus, the plaintiff maintained that the statute of limitations began to run when the negotiations ended. (*Ibid*.) The appellate court rejected this conclusion, determining that under section 912.4, the statute of limitations begins to run no later than 45 days after the filing of a

[2] Under section 912.6, subdivision (a)(4), a public entity can act on a claim that is filed against it by "reject[ing] the claim" or "compromis[ing] the claim" if "legal liability of the public entity or the amount justly due is disputed."

government claim unless the parties execute a written agreement to the contrary. (*Isaacson, supra,* at pp. 420-421.)

Isaacson rejected the plaintiff's equitable estoppel claim because a necessary element of estoppel was missing. (*Isaacson, supra,* 263 Cal.App.2d at p. 419.) Nothing in *Isaacson* suggests that equitable estoppel cannot apply in the absence of a written agreement. Moreover, Alvarado is not alleging, as the plaintiff did in *Isaacson*, that the settlement negotiations prevented the statute of limitations from starting to run. His argument is that representations made by District employees equitably estop the District from claiming the statute of limitations defense.

The District also argues that leave to amend was properly denied because the District is statutorily immune from liability arising from injuries resulting from its employees acts or omissions. The District relies on sections 818.8 and 820.2. Section 818.8 provides that "[a] public entity is not liable for an injury caused by misrepresentation by an employee of the public entity, whether or not such misrepresentation be negligent or intentional." And section 820.2 provides that "[e]xcept as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused."

We are not convinced by the District's argument that sections 818.8 and 820.2 bar Alvarez from asserting equitable estoppel. Section 818.8 immunizes the District from injuries resulting from misrepresentations made by District employees. The "misrepresentations" referenced in section 818.8 "narrowly refer[] to causes of action that are forms of the common law tort of deceit (codified in Civ. Code, § 1709) and involve interferences with financial or commercial interests." (*Finch Aerospace Corp. v. City of San Diego* (2017) 8 Cal.App.5th 1248, 1252.)

Alvarado's lawsuit, however, does not allege causes of action arising from the District employees' settlement offers. Alvarado argues that the employees' acts *give rise to a claim of equitable estoppel*, which precludes the District from claiming that his complaint is not timely filed. We have found no cases that interpret section 818.8 as the District suggests. Moreover, construing the statute in accordance with the District's interpretation would bar all claims of estoppel against public agency if the estoppel is based on statements made by the agency's employees. This interpretation would go against the line of cases establishing that a public agency can be estopped from asserting a statute of limitations defense if its agents or employees prevented or deterred the filing of a government claim. (*J.P.*, *supra*, 232 Cal.App.4th at p. 333; *John R. v. Oakland Unified School Dist.* (1989) 48 Cal.3d 438, 445.) In sum, we do not find that section 818.8 prohibits the use of the District employees' statements as a basis for an equitable estoppel claim. And for these same reasons, section 820.2. which immunizes public employees from liability for certain acts or omissions, is similarly inapplicable.

As a result, we conclude that the trial court abused its discretion when it denied Alvarado leave to amend. We determine that Alvarado satisfied his burden to show that " 'there is a reasonable possibility the defect[s] in the complaint can be cured by amendment' " (*Ard*, *supra*, 93 Cal.App.4th at p. 348), and, given the liberal policy in favor of permitting amendments, Alvarado should be given the opportunity to file an amended complaint.

DISPOSITION

The judgment of dismissal is reversed. On remand, the trial court is directed to allow the plaintiff leave to amend the complaint. The parties shall bear their own costs on appeal.

Premo, J.

WE CONCUR:

Greenwood, P. J.

Elia, J.

Alvarado v. Hollister School District
H045924